

No 42.
had existed,
and was paid,
the bond not
appearing.

Howison's disposition was null, as being *in fraudem creditorum* against the act of Parliament, being granted after the contracting of Millar's debt; and albeit the narrative of the disposition bears causes onerous, yet he offered to prove, by Howison's oath, that it was not for causes onerous, at least equivalent to the worth of the land, which was found relevant; and Howison having deponed, that his disposition was granted for a sum of 300 merks addebted to himself, and the sum of 1600 merks addebted to John Burd, for which he was cautioner for Bailie, the disponer; at the advising of the cause, it was *alleged*, That the disposition, nor the disponer's oath, could not sufficiently instruct the cause onerous; seeing the oath did not bear, that there was a price made, but only, that there was no reversion, nor promise of redemption granted; yet the disposition was truly in trust, which oft-times is tacit, as being the meaning of the parties, and is not expressed by reversion or backbond; so that if Bailie, or this arrester, would pay these sums, Howison could have no further interest. It was *answered*, That the points referred to Howison's oath were denied, and that he was not obliged to keep the bonds, but might destroy them, as being satisfied.

THE LORDS found, That as to Howison's own bond, he needed not instruct the same; but as to Burd's bond, they found, that he ought to instruct it by some adminicles, further than his own oath, that the debt was, and was paid by him, in respect his oath bore not a price made, and that he was uncle to Bailie the disponer.

Stair, v. 1. p. 372.

No 43. 1675. December 14. SOMERVILLE *against* EXECUTORS OF MUIRHEAD.

FOUND, That a bond bearing for borrowed money granted by a writer or agent to his constituent, did not infer, that the agent had got payment of all his preceding accounts; only he was ordained to depone, that the account was still resting.

Fol. Dic. v. 2. p. 135. Stair, Gosford.

*** This case is No 285. p. 11087, *voce* PRESCRIPTION.

No 44. 1678. July 24. LD ARDBLAIR *against* HUSBAND.

AN appriser having got from his debtor a bond for the precise sum in the comprising, the defence that it must be presumed to have been given in satisfaction was repelled.

Fol. Dic. v. 2. p. 135. Fountainhall.

*** This case is No 9. p. 5030, *voce* GENERAL DISCHARGE and RENUNCIATION.